

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS KEARNEY,

Plaintiff,

v.

ORDER
09-CV-679A

GLENN S. GOORD, et al.,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. , pursuant to 28 U.S.C. § 636(b)(1). On May 14, 2010, defendants filed a motion for judgment on the pleadings. On March 4, 2011, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that the motion to dismiss be granted in so far as it seeks the dismissal of Commissioner Goord and Commissioner Fischer as defendants in the action and otherwise granted except with respect to the following claims:

1. Excessive force against C.O. Stevens and C.O. Rydza;
2. Failure to intervene against Sergeant Skomski;
3. Deliberate indifference to serious medical needs against Nurse Schmidt;
4. Retaliation against Sergeant Berbary, C.O. Yackeren, C.O. Sinicki and C.O. Stevens; and

5. Denial of due process against Captain Brown, C.H.O. Schoelkoff, Sergeant Berbary, C.O. Stack, Sergeant Skomski, C.O. Rydza and Superintendent Conway.

Both plaintiff and defendants filed objections to the Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendants' motion to dismiss is granted in so far as it seeks the dismissal of Commissioner Goord and Commissioner Fischer as defendants in the action and otherwise granted except with respect to the following claims:

1. Excessive force against C.O. Stevens and C.O. Rydza;
2. Failure to intervene against Sergeant Skomski;
3. Deliberate indifference to serious medical needs against Nurse Schmidt;
4. Retaliation against Sergeant Berbary, C.O. Yackeren, C.O. Sinicki and C.O. Stevens;

5. Denial of due process against Captain Brown, C.H.O. Schoelkoff, Sergeant Berbary, C.O. Stack, Sergeant Skomski, C.O. Rydza and Superintendent Conway.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: March 31, 2011